**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 19637 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**DEEPAK RUPSINH PARMAR & 1 - Petitioner(s)**
**Versus**
**GUJARAT UNIVERSITY & 4 - Respondent(s)**

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**Appearance :**

MR SAURABH J MEHTA for Petitioner(s) : 1 - 2.
MRS VD NANAVATI for Respondent(s) : 1 - 2.
MS ML SHAH ASSISTANT GOVERNMENT PLEADER for Respondent(s) : 3 - 5.

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 21/09/2006**

**ORAL JUDGMENT**

1. In the present petition, initially the petitioners had made two grievances. However, before

this Court on 13th December 2005, the petitioner gave up challenge to the policy of the Government of reserving 90% seats in M.Sc. (Nursing) in favour of the women candidates and allocating 10% to the male candidates.

2. Second aspect of the grievance of the petitioners, which is surviving with respect to the prescription of the upper age limit for giving admission to such a course.

3. On 13th December 2005, when the Court issued Rule, the learned advocate for the petitioners did not press prayer with regard to reservation of only 10% of the seats for male candidates. In view of this, sole surviving challenge in this petition is with respect to the upper age limit prescribed by the Government in the relevant Rules.

4. The petitioners seek admission to the course of M.Sc. (Nursing). For the purpose of regulating such admission, the Government had by way of notification dated 10th September 2005 laid down the Rules for

granting admission to the said course. Rule 1.11 provides that one of the eligible criterion for admission will be that the candidates should not be more than 35 years (for reserved SC/ST/SEBC & in service candidate, same shall be 40 years). It is this rule that the petitioners have challenged in this petition.

5. Mainly the contention raised by the petitioners was that there should not any upper age limit for seeking admission to the said course. It was secondly contended that for course of diploma in nursing, age limit prescribed is between 18 to 35 years. A candidate after obtaining diploma has to first obtain a graduation degree only then he or she is qualified to apply for course of M. Sc. (Nursing). There is also an additional requirement of experience. It was, therefore, contended that prescribing upper age of limit of 35 years is not realistic. It was also contended that the Medical Council of India has not laid down any requirement of upper age.

6. On the other hand, the respondents resisted the

petition by filing affidavit-in-reply and learned A.G.P. made oral submission on behalf of the State Government. Ld. A.G.P. Ms. M.L. Shah contended that subsequently upper age limit has been relaxed to 40 years and thereafter to 42 years vide Government Resolution dated 26th March 2006. It was further contended that the petitioners have crossed that age limit also. It is additionally pointed out that the candidates seeking admission in the said course, can easily be within age limit, if he or she had started education reasonably earlier. In short, the Government policy is sought to be supported on the basis of detailed affidavit-in-reply filed. It is stated that the students passing out from the said course are mostly eligible for teaching activities.

7. I have heard the learned advocates appearing for the parties. It may be recalled that though the upper age limit earlier was 35 years, the same was thereafter, being increased to 42 years. There is also a separate age relaxation for SC, ST and SEBC and in service candidates. Thus, the Government found appropriate to limit admission only to those

students, who have not crossed 42 years. Considering the nature of course and the activities involved, if the Government has found that there is necessity to prescribed upper age limit, this Court in its writ jurisdiction would not interfere with such Government policy unless it is pointed out that the policy is wholly arbitrary or malafide. The petitioners have not laid any foundation to establish that the admission should be granted without reference to the upper age limit. In other connected courses, such as Diploma in Nursing and under graduate course in Nursing, also admittedly there is a requirement of upper of age limit. In all public employment for initial recruitment, there is prescription of upper age limit beyond which the candidate cannot be selected. It is not in dispute that the students passing out from the course of M.Sc. (Nursing) primarily get teaching assignment. It was open for the Government to provide for an upper age limit prescription therefore.

8. In the facts of the case, the decision cannot be interfered with. The petition is rejected with no

order as to costs. Rule is discharged.

**(AKIL KURESHI, J.)**

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